

Filed: November 20, 1996

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 94-2141

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Penn Advertising of Baltimore, Incorporated,

Plaintiff - Appellant,

versus

Mayor and City Council of Baltimore, etc., et  
al,

Defendants - Appellees.

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O R D E R

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The Court amends its opinion filed November 13, 1996, as follows:

On page 2, section 5 -- the counsel information is deleted and replaced with the following:

Eric Michael Rubin, Walter E. Diercks, Jeffrey Harris, Darrin N. Sacks, RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, Washington, D.C.; Andrew L. Frey, Kenneth S. Geller, Gary A. Orseck, H. Thomas Byron, III, MAYER, BROWN & PLATT, Washington, D.C., for Appellant. Neal M. Janey, City Solicitor, Burton Harry Levin, Principal Counsel, Sandra R. Gutman, Associate Solicitor, DEPARTMENT OF LAW, Baltimore, Maryland, for Appellees. Richard E. Wiley, Lawrence W. Secrest, III, Howard H. Bell, Daniel E. Troy, Luis de la Torre, WILEY, REIN & FIELDING, Washington, D.C., for Amici Curiae American Advertising Federation, et al. Mark S. Yurick, Senior Assistant City Solicitor,

Office of the City Solicitor, CITY OF CINCINNATI, Cincinnati, Ohio, for Amicus Curiae City of Cincinnati. Daniel J. Popeo, Richard A. Samp, WASHINGTON LEGAL FOUNDATION, Washington, D.C., for Amicus Curiae Washington Legal Foundation. Donald Garner, Professor of Law, SOUTHERN ILLINOIS UNIVERSITY, Carbondale, Illinois; THE MARYLAND CONGRESS OF PARENTS & TEACHERS, INC., Baltimore, Maryland, for Amicus Curiae Maryland Congress. Christopher J. Fritz, Julie Ellen Squire, Thomas C. Dame, GALLAGHER, EVELIUS & JONES, Baltimore, Maryland, for Amici Curiae Coalition for Beautiful Neighborhoods, et al. Louise H. Renne, City Attorney, Dennis Aftergut, Chief Assistant City Attorney, Barbara Solomon, Deputy City Attorney, John Cooper, Deputy City Attorney, San Francisco, California; Joan Gallo, City Attorney, George Rios, Assistant City Attorney, San Jose, California, for Amici Curiae City of San Francisco, et al. Frank W. Hunger, Assistant Attorney General, Douglas N. Letter, Appellate Litigation Counsel, Scott R. McIntosh, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Amicus Curiae United States.

On page 3, lines 9-10 of the opinion -- the citation is corrected to read "Anheuser-Busch, Inc. v. Schmoke, \_\_\_ F.3d \_\_\_, No. 94-1431 (4th Cir. Nov. 13, 1996) (Anheuser-Busch II) . . . ."

For the Court - By Direction

/s/ Patricia S. Connor

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Clerk

**PUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

PENN ADVERTISING OF BALTIMORE,  
INCORPORATED,  
Plaintiff-Appellant,

v.

MAYOR AND CITY COUNCIL OF  
BALTIMORE, A Municipal Corporation;  
KURT L. SCHMOKE, in his official  
capacity as Mayor of Baltimore City;  
DAVID TANNER, in his official capacity  
as the General Superintendent of  
Zoning Administration and  
Enforcement of Baltimore City,  
Defendants-Appellees.

THE AMERICAN ADVERTISING  
FEDERATION; THE AMERICAN

No. 94-2141

ASSOCIATION OF ADVERTISING AGENCIES;  
THE ASSOCIATION OF NATIONAL  
ADVERTISERS, INCORPORATED; THE  
OUTDOOR ADVERTISING ASSOCIATION OF  
AMERICA, INCORPORATED; WASHINGTON  
LEGAL FOUNDATION; THE CITY OF  
CINCINNATI, OHIO; THE MARYLAND  
CONGRESS OF PARENTS & TEACHERS,  
INCORPORATED; THE COALITION FOR  
BEAUTIFUL NEIGHBORHOODS; BALTIMORE  
CITY WIDE LIQUOR COALITION FOR  
BETTER LAWS AND REGULATIONS; CITY  
AND COUNTY OF SAN FRANCISCO; CITY  
OF SAN JOSE; UNITED STATES OF  
AMERICA,  
Amici Curiae.

On Remand from the United States Supreme Court.  
(S. Ct. No. 95-806)

Decided on Remand: November 13, 1996

Before NIEMEYER and HAMILTON, Circuit Judges, and  
BUTZNER, Senior Circuit Judge.

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Affirmed by published opinion. Judge Niemeyer wrote the majority opinion, in which Judge Hamilton joined. Senior Judge Butzner wrote a dissenting opinion.

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## **COUNSEL**

Eric Michael Rubin, Walter E. Diercks, Jeffrey Harris, Darrin N. Sacks, RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, Washington, D.C.; Andrew L. Frey, Kenneth S. Geller, Gary A. Orseck, H. Thomas Byron, III, MAYER, BROWN & PLATT, Washington, D.C., for Appellant. Neal M. Janey, City Solicitor, Burton Harry Levin, Principal Counsel, Sandra R. Gutman, Associate Solicitor, DEPARTMENT OF LAW, Baltimore, Maryland, for Appellees. Richard E. Wiley, Lawrence W. Secrest, III, Howard H. Bell, Daniel E. Troy, Luis de la Torre, WILEY, REIN & FIELDING, Washington, D.C., for Amici Curiae American Advertising Federation, et al. Mark S. Yurick, Senior Assistant City Solicitor, Office of the City Solicitor, CITY OF CINCINNATI, Cincinnati, Ohio, for Amicus Curiae City of Cincinnati. Daniel J. Popeo, Richard A. Samp, WASHINGTON LEGAL FOUNDATION, Washington, D.C., for Amicus Curiae Washington Legal Foundation. Donald Garner, Professor of Law, SOUTHERN ILLINOIS UNIVERSITY, Carbondale, Illinois; THE MARYLAND CONGRESS OF PARENTS & TEACHERS, INC., Baltimore, Maryland, for Amicus Curiae Maryland Congress. Christopher J. Fritz, Julie Ellen Squire, Thomas C. Dame, GALLAGHER, EVELIUS & JONES, Baltimore, Maryland, for Amici Curiae Coalition for Beautiful Neighborhoods, et al. Louise H. Renne, City Attorney, Dennis Aftergut, Chief Assistant City Attorney, Barbara Solomon, Deputy City Attorney, John Cooper, Deputy City Attorney, San Francisco, California;

Joan Gallo, City Attorney, George Rios, Assistant City Attorney, San Jose, California, for Amici Curiae City of San Francisco, et al. Frank W. Hunger, Assistant Attorney General, Douglas N. Letter, Appellate Litigation Counsel, Scott R. McIntosh, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Amicus Curiae United States.

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## OPINION

NIEMEYER, Circuit Judge:

On May 13, 1996, The Supreme Court handed down its decision in 44 Liquormart, Inc. v. Rhode Island, 116 S. Ct. 1495 (1996), and shortly thereafter vacated our decision in this case and remanded it to us "for further consideration in light of 44 Liquormart, Inc. v. Rhode Island." 116 S. Ct. 2575 (1996). We have read the opinion in 44 Liquormart and have considered its impact on the judgment in this case. For the reasons given in Anheuser-Busch, Inc. v. Schmoke, 63 F.3d 1305 (4th Cir. 1995) (Anheuser-Busch I), as modified by our decision today in Anheuser-Busch, Inc. v. Schmoke, \_\_\_ F.3d \_\_\_, No. 94-1431 (4th Cir. Nov. 13, 1996) (Anheuser-Busch II), we conclude that 44 Liquormart does not require us to change our decision in this case. Accordingly, we affirm the district court's judgment for the reasons previously given and readopt our previous decision as modified by Anheuser-Busch II. See Penn Adv. of Baltimore v. Mayor and City Council of Baltimore, 63 F.3d 1318 (4th Cir. 1995).

## IT IS SO ORDERED

BUTZNER, Senior Circuit Judge, dissenting:

I dissent for reasons that I explained in my dissent in No. 94-1431, Anheuser-Busch, Inc. v. Schmoke, and No. 94-1432, Penn Advertising of Baltimore, Inc. v. Curran.